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7 Attorneys for Plaintiff
BELLAGIO, LLC and
8 MIRAGE RESORTS, INCORPORATED

9
10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12
13 BELLAGIO, LLC, a Nevada limited
liability company; MIRAGE RESORTS,
14 INCORPORATED, a Nevada corporation,

15 Plaintiffs,

COMPLAINT

16
17 v.

18 MAGNIFLEX USA, LTD., a New York
corporation;

19 Defendant.
20

21 For their complaint, Plaintiff Bellagio, LLC, and Mirage Resorts, Incorporated
22 (“MRI”) (collectively defined below as “Bellagio”) allege as follows:

23 **NATURE OF THE CASE**

24 This is an action by Plaintiffs Bellagio, LLC, and its parent, MRI, against
25 Defendant Magniflex USA, Ltd. (“Magniflex”) for trademark dilution, trademark
26 infringement, and common law trademark infringement and unfair competition arising out
27 of Magniflex’s adoption and use of the BELLAGIO trademark for mattresses. Magniflex
28

1 is using the BELLAGIO mark in a manner that is likely to cause confusion, cause mistake,
2 or to deceive consumers as to an affiliation, connection, or association between Magniflex
3 and Bellagio, or as to the origin, sponsorship, or approval of Magniflex's goods or
4 commercial activities by Bellagio. Magniflex is also using the BELLAGIO mark in a
5 manner that is likely to dilute the distinctiveness of the famous BELLAGIO mark.
6 Plaintiffs seek injunctive relief, damages, attorneys' fees, and costs.

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over Plaintiffs' federal claims pursuant to
9 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a). This Court has supplemental jurisdiction over
10 Plaintiffs' state and common law claims under 28 U.S.C. § 1367, because those claims are
11 related to claims under this Court's original jurisdiction and form part of the same case or
12 controversy under Article III of the United States Constitution.

13 2. This Court has specific personal jurisdiction over Magniflex, because,
14 among other reasons: (a) Magniflex has expressly aimed its tortious conduct at Plaintiffs in
15 the State of Nevada knowing that such conduct would have effects in, and cause injury to,
16 Plaintiffs in the State of Nevada; (b) upon information and belief, Magniflex sells its
17 products, including the BELLAGIO mattresses at issue in this case, through a nationwide
18 dealer network, direct shipping into Nevada, and currently at a trade show at the World
19 Market Center in Las Vegas, Nevada; and (c) upon information and belief, Magniflex has
20 continuously and systemically conducted business in and with residents of the State of
21 Nevada, including, among other things, appearing at trade shows in Las Vegas, shipping
22 products to Nevada, and selling products directly or indirectly through interactive web
23 sites to residents of Nevada.

24 3. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b)(2),
25 because a substantial part of the events which give rise to the claims asserted by Plaintiffs
26 have occurred and continue to occur in this judicial district and the situs of the intellectual
27 property at issue is deemed to be located in this judicial district. Venue is appropriate in
28 the unofficial southern division of the District of Nevada.

THE PARTIES

4. Bellagio, LLC (defined above as “Bellagio”) is a Nevada limited liability company with its principal place of business in Las Vegas, Nevada. Bellagio owns and operates the Bellagio resort hotel and casino in Las Vegas, Nevada.

5. Mirage Resorts, Incorporated (defined above as “MRI”) is a Nevada corporation with its principal place of business in Las Vegas, Nevada. MRI is the parent of Bellagio and owns the BELLAGIO Marks (defined below) used by Bellagio LLC. (For convenience, MRI and Bellagio, LLC, will be collectively referred to as Bellagio throughout the Complaint.)

6. Upon information and belief, Defendant Magniflex USA Ltd. is a New York corporation with its principal place of business in New York, New York.

ALLEGATIONS COMMON TO ALL CLAIMS

7. The Bellagio is a world-famous resort hotel and casino located on the Las Vegas Strip in Las Vegas, Nevada. The Bellagio features 3,933 guest rooms, 100,000 square feet of gaming, five pools, the Fountains of Bellagio, a conservatory and botanical garden, the Bellagio Gallery of Fine Art, a luxury shopping promenade, a spa and salon, Cirque du Soleil’s O show, world-renowned restaurants, lounges, a nightclub, wedding chapels, convention and meeting rooms, and other amenities.

8. Since opening in 1998, Bellagio has continuously used the BELLAGIO trademark, including the BELLAGIO word mark and a mark comprised of the word BELLAGIO against an enlarged scripted B (“B BELLAGIO Mark”) (collectively, “BELLAGIO Marks”) in connection with a wide variety of goods and services.

9. Bellagio has received widespread recognition and numerous awards. Some of these awards include:

- AAA Five Diamond Award, 2002 - 2010
- **Celebrated Living** #1 Hotel in the U.S. Readers Choice Platinum List, 2009
- **Condé Nast Traveler Magazine** Gold List of the World's Best Places to Stay, 2008

- 1 • **Expedia Insiders Select** Top Destination Resort, 2009
- 2 • **Forbes Traveler Magazine** World's 400 Best Hotels, 2008
- 3 • **Market Metrix Hospitality Index** Best Upscale Casino Hotel, 2008
- 4 • **Mobil** Four-Star Mobil Travel Guide Award, 2008, 2009
- 5 • **Travel + Leisure Magazine** Top 500 World's Best Hotels, 2009, 2010
- 6 • **Travel Weekly** - Readers Choice Award 2008
- 7 • **Qantas** Frequent Flyer Favorite Hotel, 2009
- 8 • **Zagat** Survey Top Overall, 2008; Most Popular Hotel, 2008
- 9

10 10. Bellagio has spent millions of dollars to advertise and promote the
11 BELLAGIO Marks and the associated goods and services in a variety of media, including,
12 print, broadcast, and on the Internet through the web site accessible at <bellagio.com>.

13 11. Bellagio has been featured in the media throughout the United States and
14 around the world, including in newspapers, magazines, television programs, and movies,
15 such as Ocean's Eleven and Ocean's Thirteen.

16 12. Millions of consumers visit the Bellagio each year.

17 13. Bellagio owns several federal trademark registrations for the BELLAGIO
18 Marks on the Principal Register of the United States Patent and Trademark Office
19 ("USPTO") including, among others:

- 20 a. BELLAGIO for hotels, beauty salons and health spas (Registration
21 No. 2,232,487);
- 22 b. BELLAGIO for casinos and live entertainment services in the nature
23 of performances by singers, comedians, dancers, and musical groups
24 (Registration No. 2,232,486);
- 25 c. BELLAGIO for photography services (Registration No. 2,964,701);
- 26 d. BELLAGIO for providing convention facilities and providing banquet
27 and social function facilities for special occasions (Registration No.
28 2,915,992);

- e. BELLAGIO for wedding chapel services (Registration No. 2,959,168);
- f. BELLAGIO for real estate investment and real estate management (Registration No. 2,873,850);
- g. BELLAGIO for, among other things, residential and commercial building construction and real estate development (Registration No. 2,873,849);
- h. BELLAGIO for retail store services, namely, retail apparel and clothing stores; retail shops featuring perfume, cologne, cosmetics, personal body care lotions, soaps, gels and body sprays; retail store services featuring handbags, purses, shoes and accessories; retail store services featuring convenience store items (Registration No. 3,725,615);
- i. BELLAGGIO for real estate listings and brokerage services (Registration No. 2,788,470);
- j. BELLAGIO for wearing apparel, namely, t-shirts, tank tops, collared golf shirts, sweaters, jackets, jogging suits, sweat shirts, sweat pants, short pants, swim wear, dress shirts, skirts, blouses, dress pants, caps, hats and bandannas (Registration No. 2,313,142);
- k. BELLAGIO for cologne, perfume, eau de toilette, body lotion, hand cream, bath and shower gels, massage oils, bath salts, bath soaps, hair shampoo, hair conditioner (Registration No. 2,559,405);
- l. BELLAGIO (stylized version of Bellagio with a scripted B in the background (hereafter, "B BELLAGIO") for casino and entertainment services in the nature of live performances by singers (Registration No. 2,570,928);
- m. B BELLAGIO (stylized) for photography services (Registration No. 2,964,700);

- 1 n. B BELLAGIO (stylized) for conducting and providing facilities for
2 special events featuring casino and gaming contests and tournaments;
3 botanical gardens; health club services; booking of theatre tickets;
4 special event planning; cabarets; night clubs; amusement arcades;
5 beach and pool clubs, namely, providing fitness and exercise facilities
6 featuring pools and bathing and showering facilities; providing
7 information in the field of gaming and entertainment via the internet
8 (Registration No. 3,466,805);
- 9 o. B BELLAGIO (stylized) for restaurant services; bar and lounge
10 services; providing convention facilities; providing banquet and social
11 function facilities for special occasions; catering; providing travel
12 lodging information services via the internet; providing information in
13 the fields of dining, hospitality and exhibition facilities via the
14 internet; travel agency services, namely, making reservations and
15 booking for temporary lodging, restaurants and meals (Registration
16 No. 3,491,777);
- 17 p. B BELLAGIO (stylized) for retail store services, namely, retail
18 apparel and clothing stores; retail shops featuring perfume, cologne,
19 cosmetics, personal body care lotions, soaps, gels and body sprays;
20 retail store services featuring handbags, purses, shoes and accessories;
21 retail store services featuring convenience store items (Registration
22 No. 3,725,616);
- 23 q. B BELLAGIO (stylized) for art galleries; issuing gift certificates
24 which may then be redeemed for goods or services; providing
25 facilities for business meetings; providing information in the field of
26 shopping via the internet (Registration No. 3,466,804);
- 27 r. B BELLAGIO (stylized) for clothing, namely, t-shirts; tank tops; polo
28 shirts; sweatshirts; jackets; shorts; sundresses; two-piece sets

1 comprised of tops and bottoms; headwear; sleepwear; socks
2 (Registration No. 3,702,271);

3 s. B BELLAGIO (stylized) for hotel, beauty salons and health spas
4 (Registration No. 2,514,690);

5 t. B BELLAGIO (stylized) for wedding chapel services (Registration
6 No. 2,924,850); and

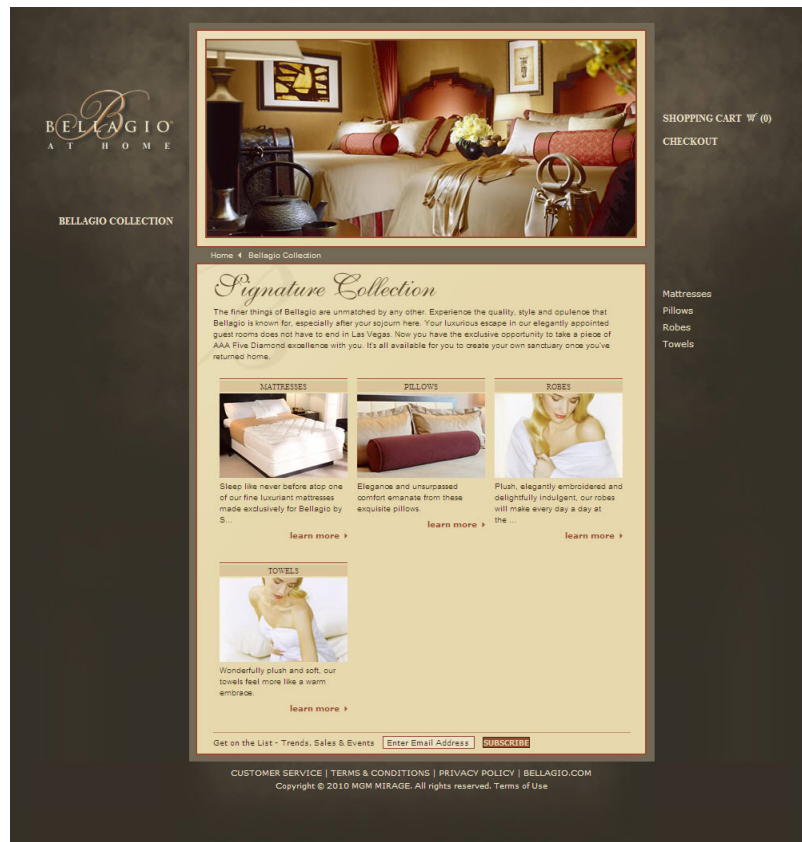
7 u. BELLAGIO GALLERY OF FINE ART for art gallery services
8 (Registration No. 2,260,030).

9 These federal trademark registrations are valid and subsisting and have not been
10 abandoned, cancelled or revoked. Moreover, federal trademark registration nos.
11 2,232,487, 2,232,486, 2,570,928, 2,788,470, 2,873,850, 2,313,142, 2,559,405, 2,514,690,
12 and 2,260,030 have become incontestable through the filing of Section 8 and 15 affidavits
13 in the USPTO.

14 14. In addition to its federal trademark registrations, Bellagio owns Nevada state
15 trademark registrations and common law rights in and to the BELLAGIO Marks for a
16 variety of goods and services.

17 15. Based on the widespread recognition of the BELLAGIO Marks, Bellagio's
18 extensive and widespread use of the BELLAGIO Marks, and other relevant factors, the
19 BELLAGIO Marks have become famous within the meaning of the Trademark Dilution
20 Revision Act.

21 16. Since at least as early as 2001 and long before Magniflex began selling
22 BELLAGIO mattresses in the United States, Bellagio has sold mattresses, pillows, towels
23 and robes to consumers. The mattresses are manufactured by Serta and were designed
24 especially for Bellagio, which uses these mattresses in its hotel rooms. Consumers can
25 view and purchase these products at a retail store in the Bellagio or by clicking on the
26 shopping link on the home page of the <Bellagio.com> web site and the link to "Bellagio
27 at Home." A true and accurate image of a screen shot of the Bellagio page showing its
28 offering for sale of mattresses, pillows, towels and robes is on the following page.



17. In addition to offering mattresses, pillows and other products through sale at its retail store and online, Bellagio has been negotiating a deal to license the BELLAGIO mark for mattresses that would be sold in third-party retail locations throughout the United States.

18. In conjunction with these negotiations, Bellagio prepared and filed additional federal trademark applications for the BELLAGIO Marks. On February 3, 2010 Bellagio filed federal trademark applications for BELLAGIO for mattresses (Serial No. 77/927,465) and B BELLAGIO (stylized) for mattresses (Serial No. 77/927,466). These applications are currently pending in the USPTO.

19. In addition, on March 4, 2010, Bellagio filed a federal trademark application for BELLAGIO for towels and washcloths, bed linen, namely, bed sheets, duvet covers, blankets, and pillow cases (Serial No. 77/950,641). This application is currently pending in the USPTO and has been published for opposition.

20. Upon information and belief, Magniflex sells foam mattresses and pillows

1 throughout the United States. Magniflex sells its mattresses and products to consumers
2 through retail outlets located throughout the United States. In addition to selling direct to
3 consumers, Magniflex markets its mattresses and pillows to designers and hotels, including
4 offering providing private labeling for hotels. Indeed, Magniflex touts to hotels that there
5 is “extraordinary revenue opportunity via sales to guests.” Thus, Magniflex offers hotels
6 the opportunity to sell Magniflex mattresses under the hotel’s own brand.

7 21. Upon information and belief, on or about April 1, 2010, Magniflex began
8 offering a mattress under the BELLAGIO mark at the Spring 2010 High Point Furniture
9 Market, located in High Point, North Carolina. Magniflex’s BELLAGIO mattress is sold
10 as a luxurious mattress featuring “fine craftsmanship” and innovative features. Upon
11 information and belief, Magniflex’s BELLAGIO mattress is available for shipping direct
12 to consumers throughout the United States, including Nevada, and is available through
13 retail stores throughout the United States. In addition, Magniflex is currently exhibiting
14 the mattress for sale in the World Market Center in Las Vegas, Nevada.

15 22. Magniflex announced its BELLAGIO mattress long after Bellagio began
16 selling mattresses and after Bellagio filed its trademark application for the BELLAGIO
17 Marks for mattresses.

18 23. Magniflex’s use of the BELLAGIO mark for mattresses is likely to cause
19 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association
20 between Magniflex and Bellagio, or as to the origin, sponsorship, or approval of
21 Magniflex’s mattresses by Bellagio. Indeed, consumers are likely to believe that Bellagio
22 has authorized or licensed Magniflex to manufacture and sell BELLAGIO branded
23 mattresses.

24 24. In addition, Magniflex’s use of the BELLAGIO mark for mattresses is likely
25 to dilute the distinctiveness of Bellagio’s BELLAGIO Marks.

26 25. Magniflex’s conduct has caused and is likely to cause Bellagio to suffer
27 damages and irreparable injury, including loss of reputation and goodwill, unless
28 Magniflex’s conduct is enjoined. Indeed, Magniflex’s conduct is likely to interfere with or

1 undermine the nationwide launch of the sale of BELLAGIO-branded mattresses licensed
2 by Bellagio.

3 26. Magniflex's tortious conduct was and is willful.

4 **COUNT I**

(Trademark infringement under
5 the Lanham Act, 15 U.S.C. § 1114)

6 27. Magniflex's use in commerce of the BELLAGIO mark constitutes a
7 reproduction, copying, counterfeiting, and colorable imitation of the BELLAGIO Marks in
8 a in a manner that is likely to cause confusion or mistake or deceive consumers.

9 28. Magniflex's use of the BELLAGIO mark in connection with the sale,
10 offering for sale, or advertising of mattresses is likely to cause confusion or mistake, or to
11 deceive consumers as to an affiliation, connection, or association with Bellagio or as to the
12 origin, sponsorship, or approval of Magniflex's goods or commercial activities by
13 Bellagio.

14 29. As a direct and proximate result of such trademark infringement, Magniflex
15 has caused and will cause Bellagio to suffer irreparable injury and damages in an amount
16 to be determined at trial.

17 **COUNT II**

(Trademark dilution under
18 15 U.S.C. § 1125(c))

19 32. Bellagio incorporates the allegations in the preceding paragraphs as if fully
20 set forth herein.

21 33. The BELLAGIO Marks are famous within the meaning of the Federal
22 Trademark Dilution Act.

23 34. Magniflex adopted and began using the BELLAGIO mark in commerce after
24 it became famous.

25 35. Magniflex's adoption and use of the BELLAGIO mark is likely to cause
26 dilution within the meaning of the Federal Trademark Dilution Act.

27 36. As a direct and proximate result of such trademark dilution, Bellagio has
28

1 suffered irreparably injury and damages in an amount to be determined at trial.

2 **COUNT III**

3 (Unfair Competition under
4 the Lanham Act, 15 U.S.C. § 1125(a))

5 28. Bellagio incorporates the allegations in the preceding paragraphs as if fully
6 set forth herein.

7 29. Magniflex's use of the BELLAGIO mark in commerce constitutes a false
8 designation of origin which is likely to cause confusion, or to cause mistake, or to deceive
9 as to the affiliation, connection, or association of Magniflex with Bellagio, or as to the
10 origin, sponsorship, or approval of Magniflex's goods by Bellagio.

11 30. As a direct and proximate result of such unfair competition, Magniflex has
12 caused and will cause Bellagio to suffer irreparable injury and damages in an amount to be
13 determined at trial.

14 **COUNT IV**

15 (Common law unfair competition)

16 43. Bellagio incorporates the allegations in the preceding paragraphs as if fully
17 set forth herein.

18 44. Magniflex's use of the BELLAGIO mark for mattresses constitutes unfair
19 competition under common law.

20 45. As a direct and proximate result of such unfair competition, Bellagio will has
21 suffered and will suffer monetary loss and irreparable injury to its business, reputation, and
22 goodwill.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Bellagio respectfully prays that the Court:

25 A. Preliminarily and permanently enjoin Magniflex and all others acting in
26 concert with Magniflex from engaging in the tortious conduct set forth in this Complaint,
27 including, but not limited to, using the BELLAGIO mark, or any colorable imitations
28 thereof, whether alone or in association with any word or design, in commerce in
connection with the sale of mattresses;

1 B. Award Bellagio damages, attorneys' fees, costs and interest in an amount to
2 be determined at trial; and

3 C. Grant any other relief to which Bellagio is entitled.

4 EXECUTED this 4th day of August, 2010.

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